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of the State of California  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

EMMANUEL ZARCO

Respondent.

Case No. 2892

OAH No.

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 11, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 50747 to Emmanuel Zarco (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2005, unless renewed.

2. On or about July 22, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2892 against Respondent before the Board of Pharmacy.

3. On or about July 26, 2005, Fe M. Domingo, an employee of the California Department of Justice, served by Certified and First Class Mail a copy of Accusation No. 2892, a Statement to Respondent, two copies of a Notice of Defense, a Request for Discovery, and a copy of Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 1220 Severus Drive, Vallejo, CA 94589-1484. A copy of the

1 Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are  
2 incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the  
4 provisions of Government Code section 11505, subdivision (c).

5 5. Government Code section 11506 states, in pertinent part:

6 "(c) The respondent shall be entitled to a hearing on the merits if the respondent  
7 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the  
8 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of  
9 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

10 6. Respondent failed to file a Notice of Defense within 15 days after service  
11 upon him of the Accusation, and has therefore waived his right to a hearing on the merits of  
12 Accusation No. 2892.

13 7. California Government Code section 11520 states, in pertinent part:

14 "(a) If the respondent either fails to file a notice of defense or to appear at the  
15 hearing, the agency may take action based upon the respondent's express admissions or upon  
16 other evidence and affidavits may be used as evidence without any notice to respondent."

17 8. Pursuant to its authority under Government Code section 11520, the Board  
18 finds Respondent is in default. The Board will take action without further hearing and, based on  
19 Respondent's express admissions by way of default and the evidence before it, contained in  
20 exhibits A and B finds that the allegations in Accusation No. 2892 are true.

21 9. The total costs for investigation and enforcement are \$1,775.50 as of  
22 August 29, 2005.

#### 23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Emmanuel Zarco has  
25 subjected his Pharmacy Technician License No. TCH 50747 to discipline.

26 2. A copy of the Accusation and the related documents and Declaration of  
27 Service are attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1                   4.       The Board of Pharmacy is authorized to revoke Respondent's Pharmacy  
2 Technician License based upon the following violations alleged in the Accusation:

3                   a.       In violation of Business and Professions Code section 4301(f),  
4 Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption  
5 when he, while employed as a Pharmacy Technician (Cashier) in or about June 2004 at Rite Aid  
6 Pharmacy # 6233 (PHY 43899), in San Francisco, California, stole or attempted to steal from his  
7 employer retail items and controlled substances **diazepam** and **APAP with hydrocodone**.

8                   b.       In violation of Business and Professions Code sections 4301(h), (j),  
9 (o), 4059, and/or Health and Safety Code section 11170, Respondent furnished **diazepam**, a  
10 dangerous drug / controlled substance, to himself without a valid prescription.

11                  c.       In violation of Business and Professions Code sections 4301(h), (j),  
12 (o), 4059, and/or Health and Safety Code section 11170, Respondent furnished **APAP with**  
13 **hydrocodone**, a dangerous drug / controlled substance, to himself without a valid prescription.

14                  d.       In violation of Business and Professions Code sections 4301(j), (o),  
15 and/or 4060, Respondent, possessed, conspired to possess, and/or assisted in or abetted the  
16 possession of **diazepam**, a controlled substance, without a valid prescription.

17                  e.       In violation of Business and Professions Code sections 4301(j), (o),  
18 and/or 4060, Respondent, possessed, conspired to possess, and/or assisted in or abetted the  
19 possession of **APAP with hydrocodone**, a controlled substance, without a valid prescription.

20                  f.       In violation of Business and Professions Code sections 4301(j), (o),  
21 and/or Health and Safety Code section 11173(a), Respondent obtained **diazepam**, a controlled  
22 substance, by fraud, deceit, or subterfuge.

23                  g.       In violation of Business and Professions Code sections 4301(j), (o),  
24 and/or Health and Safety Code section 11173(a), Respondent obtained **APAP with**  
25 **hydrocodone**, a controlled substance, by fraud, deceit, or subterfuge.

26                  h.       In violation of Business and Professions Code sections 4301(j), (o),  
27 and/or Health and Safety Code section 11375, Respondent possessed, conspired to possess,  
28 and/or assisted in or abetted possession of **diazepam**, without a prescription.

1 i. In violation of Business and Professions Code sections 4301(j), (o),  
2 and/or Health and Safety Code section 11350, Respondent possessed, conspired to possess,  
3 and/or assisted in or abetted possession of **APAP with hydrocodone**, a narcotic controlled  
4 substance, without a prescription.

5 j. In violation of Business and Professions Code sections 4301(j), (o),  
6 and/or Health and Safety Code section 11377, Respondent possessed, conspired to possess,  
7 and/or assisted in or abetted possession of **diazepam**, a non-narcotic controlled substance,  
8 without a prescription.

9 k. In violation of Business and Professions Code section 4301,  
10 Respondent engaged in unprofessional conduct by way of the foregoing acts.

11  
12 ORDER

13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 50747,  
14 heretofore issued to Respondent Emmanuel Zarco, is revoked.


15 Pursuant to Government Code section 11520, subdivision (c), Respondent may  
16 serve a written motion requesting the Decision be vacated and stating grounds relied on within  
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
18 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

19 This Decision shall become effective on November 2, 2005.

20 It is so ORDERED October 3, 2005

21 BOARD OF PHARMACY  
22 DEPARTMENT OF CONSUMER AFFAIRS  
23 STATE OF CALIFORNIA

24 By

  
25 STANLEY W. GOLDENBERG  
26 Board President

27 40061946.wpd  
28 DOJ docket number:SF2005200203

29 Attachments:

30 Exhibit A: Accusation No.2892, Related Documents, and Declaration of Service

Exhibit A

Accusation No. 2892,  
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General  
of the State of California  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

EMMANUEL ZARCO  
1220 Severus Drive  
Vallejo, CA 94589-1484

Pharmacy Technician License No. TCH 50747

Respondent.

Case No. 2892

OAH No.

**A C C U S A T I O N**

Complainant alleges:

**PARTIES**

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer, Board of Pharmacy, Department of Consumer Affairs.
2. On or about September 11, 2003, the Board of Pharmacy issued Pharmacy Technician License Number TCH 50747 to Emmanuel Zarco (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2005, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1                   4.       Section 4011 of the Code provides that the Board shall administer and  
2 enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled  
3 Substances Act [Health & Safety Code, § 11000 et seq.].

4                   5.       Section 4300(a) of the Code provides that every license issued by the  
5 Board may be suspended or revoked.

6                   6.       Section 118(b) of the Code provides, in pertinent part, that the suspension,  
7 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to  
8 proceed with a disciplinary action during the period within which the license may be renewed,  
9 restored, reissued or reinstated. Section 4402(a) of the Code provides that any license that is not  
10 renewed within three years following its expiration may not be renewed, restored, or reinstated  
11 and shall be canceled by operation of law at the end of the three-year period.

#### 12 13   STATUTORY PROVISIONS

14                   7.       Section 4301 of the Code provides, in pertinent part, that the Board shall  
15 take action against any holder of a license who is guilty of "unprofessional conduct," defined to  
16 include, but not be limited to, any of the following:

17   ...

18                   “(f) The commission of any act involving moral turpitude, dishonesty, fraud,  
19 deceit, or corruption, whether the act is committed in the course of relations as a licensee or  
20 otherwise, and whether the act is a felony or misdemeanor or not.

21   ...

22                   “(j) The violation of any of the statutes of this state or of the United States  
23 regulating controlled substances and dangerous drugs.

24   ...

25                   “(o) Violating or attempting to violate, directly or indirectly, or assisting in or  
26 abetting the violation of or conspiring to violate any provision or term of this chapter or of the  
27 applicable federal and state laws and regulations governing pharmacy, including regulations  
28 established by the board.

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8. California Code of Regulations, title 16, section 1770, states:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

9. Section 4059 of the Code provides, in pertinent part, that a person may not furnish any dangerous drug or dangerous device except upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

10. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife, a nurse practitioner, or a physician assistant.

11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

12. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13. Health and Safety Code section 11350, in pertinent part, makes it unlawful for any person to possess any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon a written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

14. Health and Safety Code section 11375, in pertinent part, makes it unlawful for any person to possess without a prescription, or to possess for sale, or to sell, **diazepam**.



15. Health and Safety Code section 11377, in pertinent part, makes it unlawful for any person to possess any controlled substance classified in Schedule III, IV, or V which is not a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

## CONTROLLED SUBSTANCES / DANGEROUS DRUGS

17. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

18. Section 4022 of the Code states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

“(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without prescription,’ ‘Rx only,’ or words of similar import.

...

“(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.”

19. **Valium®** is a brand name for **diazepam**, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(9) and a dangerous drug as designated by Business and Professions Code section 4022. It is a depressant drug.

20. **APAP with hydrocodone** is a common designation for a compound of acetaminophen (APAP) and **hydrocodone bitartrate**, a Schedule III controlled substance as designated by Health and Safety Code section 11056(e)(4) and a dangerous drug as designated by Business and Professions Code section 4022, intended for pain relief. This compound is also known by the brand name **Vicodin®**. It is a narcotic drug.

1 FACTUAL BACKGROUND

2 21. From on or about August 2, 2003 to on or about July 2, 2004, Respondent  
3 was employed as a Pharmacy Technician (Cashier) at Rite Aid Pharmacy # 6233 (PHY 43899),  
4 located at 776 Market Street in San Francisco, California.

5 22. On or about June 23, 2004, Respondent was apprehended during his lunch  
6 break by plainclothes store security at Rite Aid Pharmacy # 6233 while attempting to shoplift one  
7 or more retail items from the store, including a Snapple® juice drink.

8 23. On or about June 23, 2004 Respondent admitted his attempted theft to Rite  
9 Aid security and/or supervisors, and further admitted in writing that he had also stolen other  
10 items, including food items, one bottle (100 tablets - 5 mg) of **diazepam**, and one bottle (100  
11 tablets) of generic **APAP with hydrocodone** (500 mg acetaminophen/5 mg hydrocodone).

12 24. On or about June 23, 2004, Respondent executed a promissory note for the  
13 payment of restitution to Rite Aid of \$96.84, to cover the cost of the stolen items.

14 25. On or about July 1, 2004, an audit performed at Rite Aid Pharmacy # 6233  
15 confirmed a loss of 100 tablets of 5 mg **diazepam**, and 100 tablets of **APAP with hydrocodone**.

16  
17 FIRST CAUSE FOR DISCIPLINE

18 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

19 26. Respondent is subject to discipline under section 4301(f) of the Code in  
20 that Respondent, as described in paragraphs 21-25 above, committed numerous acts involving  
21 moral turpitude, dishonesty, fraud, deceit, or corruption.

22  
23 SECOND CAUSE FOR DISCIPLINE

24 (Unlawful Self-Furnishing of Dangerous Drug / Controlled Substance)

25 27. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of  
26 the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that  
27 Respondent, as described in paragraphs 21-25 above, furnished **diazepam (Valium)**, a dangerous  
28 drug and controlled substance, to himself without a valid prescription.

1 THIRD CAUSE FOR DISCIPLINE

2 (Unlawful Self-Furnishing of Dangerous Drug / Controlled Substance)

3 28. Respondent is subject to discipline under section 4301(h), (j), and/or (o) of  
4 the Code, section 4059 of the Code, and/or Health and Safety Code section 11170, in that  
5 Respondent, as described in paragraphs 21-25 above, furnished **APAP with hydrocodone**  
6 (**Vicodin**), a dangerous drug and controlled substance, to himself without a valid prescription.  
7

8 FOURTH CAUSE FOR DISCIPLINE

9 (Unlawful Possession of Controlled Substance)

10 29. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
11 Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 21-25  
12 above, possessed, conspired to possess, and/or assisted in or abetted the possession of **diazepam**  
13 (**Valium**), a controlled substance, without a valid prescription.  
14

15 FIFTH CAUSE FOR DISCIPLINE

16 (Unlawful Possession of Controlled Substance)

17 30. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
18 Code, and/or section 4060 of the Code, in that Respondent, as described in paragraphs 21-25  
19 above, possessed, conspired to possess, and/or assisted in or abetted the possession of **APAP**  
20 **with hydrocodone (Vicodin)**, a controlled substance, without a valid prescription.  
21

22 SIXTH CAUSE FOR DISCIPLINE

23 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

24 31. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
25 Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in  
26 paragraphs 21-25 above, obtained **diazepam (Valium)**, a controlled substance, by fraud, deceit,  
27 or subterfuge.  
28

///

1 SEVENTH CAUSE FOR DISCIPLINE

2 (Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)

3 32. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
4 Code, and/or Health and Safety Code section 11173(a), in that Respondent, as described in  
5 paragraphs 21-25 above, obtained **APAP with hydrocodone (Vicodin)**, a controlled substance,  
6 by fraud, deceit, or subterfuge.

7  
8 EIGHTH CAUSE FOR DISCIPLINE

9 (Unlawful Possession of Narcotic Controlled Substance)

10 33. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
11 Code, and/or Health and Safety Code section 11350, in that, as described in paragraphs 21-25  
12 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of  
13 **APAP with hydrocodone (Vicodin)**, a narcotic controlled substance, without a prescription.

14  
15 NINTH CAUSE FOR DISCIPLINE

16 (Unlawful Possession of Diazepam)

17 34. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
18 Code, and/or Health and Safety Code section 11375, in that, as described in paragraphs 21-25  
19 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of  
20 **diazepam (Valium)**, without a prescription.

21  
22 TENTH CAUSE FOR DISCIPLINE

23 (Unlawful Possession of Non-Narcotic Controlled Substances)

24 35. Respondent is subject to discipline under section 4301(j) and/or (o) of the  
25 Code, and/or Health and Safety Code section 11377, in that, as described in paragraphs 21-25  
26 above, Respondent possessed, conspired to possess, and/or assisted in or abetted possession of  
27 **diazepam (Valium)**, a non-narcotic controlled substance, without a prescription.

ELEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

36. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 21-25 above, engaged in unprofessional conduct.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

A. Revoking or suspending Pharmacy Technician License Number TCH 50747, issued to Emmanuel Zarco.

B. Ordering Emmanuel Zarco to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

C. Taking such other and further action as is deemed necessary and proper.

DATED: 7/22/05

  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

SF2005200203

20018835.wpd

BILL LOCKYER, Attorney General  
of the State of California  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF PHARMACY  
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STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

EMMANUEL ZARCO

Respondent.

Case No. 2892

**STATEMENT TO RESPONDENT**

[Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

Enclosed is a copy of the Accusation that has been filed with the Board of  
Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

Unless a written request for a hearing signed by you or on your behalf is delivered  
or mailed to the Board, represented by Deputy Attorney General Joshua A. Room, within fifteen  
(15) days after a copy of the Accusation was personally served on you or mailed to you, you will  
be deemed to have waived your right to a hearing in this matter and the Board may proceed upon  
the Accusation without a hearing and may take action thereon as provided by law.

The request for hearing may be made by delivering or mailing one of the enclosed  
forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided  
in section 11506 of the Government Code, to

**Joshua A. Room  
Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, California 94102.**

1                   You may, but need not, be represented by counsel at any or all stages of these  
2 proceedings.

3                   The enclosed Notice of Defense, if signed and filed with the Board, shall be  
4 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any  
5 objection to the form of the Accusation unless you file a further Notice of Defense as provided in  
6 section 11506 of the Government Code within fifteen (15) days after service of the Accusation  
7 on you.

8                   If you file any Notice of Defense within the time permitted, a hearing will be held  
9 on the charges made in the Accusation.

10                  The hearing may be postponed for good cause. If you have good cause, you are  
11 obliged to notify the Office of Administrative Hearings, 1515 Clay Street, Suite 206, Oakland,  
12 California 94612, within ten (10) working days after you discover the good cause. Failure to  
13 notify the Office of Administrative Hearings within ten (10) days will deprive you of a  
14 postponement.

15                  Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are  
16 enclosed.

17                  If you desire the names and addresses of witnesses or an opportunity to inspect  
18 and copy the items mentioned in section 11507.6 of the Government Code in the possession,  
19 custody or control of the Board you may send a Request for Discovery to the above designated  
20 Deputy Attorney General.

21                               **NOTICE REGARDING STIPULATED SETTLEMENTS**

22                  It may be possible to avoid the time, expense and uncertainties involved in an  
23 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated  
24 settlement is a binding written agreement between you and the government regarding the matters  
25 charged and the discipline to be imposed. Such a stipulation would have to be approved by the  
26 Board of Pharmacy but, once approved, it would be incorporated into a final order.

27                  Any stipulation must be consistent with the Board's established disciplinary  
28 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the

1 Board's Disciplinary Guidelines will be provided to you on your written request to the state  
2 agency bringing this action.

3 If you are interested in pursuing this alternative to a formal administrative hearing,  
4 or if you have any questions, you or your attorney should contact Deputy Attorney General  
5 Joshua A. Room at the earliest opportunity.

6 \*\*\*\*\*

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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

EMMANUEL ZARCO

Respondent.

Case No. 2892

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

EMMANUEL ZARCO

Respondent.

Case No. 2892

**NOTICE OF DEFENSE**

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: \_\_\_\_\_

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

**Check appropriate box:**

- ☐ I do not consent to electronic reporting.

The hearing in this case will be electronically reported/recorded, unless you check the above-left box to indicate that you do not consent to electronic recording, in which case the hearing will be reported by a stenographic reporter. If you do not check this box, you may withdraw your consent to electronic recording at any point up to fifteen (15) calendar days prior to the date set for hearing, by a written statement served on the Office of Administrative Hearings and on counsel for Complainant. If the box is not checked, and no written withdrawal of consent is served on the Office of Administrative Hearing and on counsel for Complainant by fifteen (15) calendar days prior to the hearing, you waive any right to stenographic reporting.

- ☐ I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- ☐ I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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1 BILL LOCKYER, Attorney General  
of the State of California  
2 JOSHUA A. ROOM, State Bar No. 214663  
Deputy Attorney General  
3 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
4 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7 **BEFORE THE**  
**BOARD OF PHARMACY**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2892

11 EMMANUEL ZARCO

**REQUEST FOR DISCOVERY**

12 Respondent.

[Gov. Code § 11507.6]

13  
14 TO RESPONDENT:

15 Under section 11507.6 of the Government Code of the State of California, parties  
16 to an administrative hearing, including the Complainant, are entitled to certain information  
17 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the  
18 Government Code concerning such rights is included among the papers served.

19 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU  
20 ARE HEREBY REQUESTED TO:

- 21 1. Provide the names and addresses of witnesses to the extent known to the  
22 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and  
23 2. Provide an opportunity for the Complainant to inspect and make a copy of any of  
24 the following in the possession or custody or under control of the Respondent:
- 25 a. A statement of a person, other than the Respondent, named in the initial  
26 administrative pleading, or in any additional pleading, when it is claimed that the act or  
27 omission of the Respondent as to this person is the basis for the administrative  
28 proceeding;

1           b.       A statement pertaining to the subject matter of the proceeding made by any  
2 party to another party or persons;

3           c.       Statements of witnesses then proposed to be called by the Respondent and  
4 of other persons having personal knowledge of the acts, omissions or events which are the  
5 basis for the proceeding, not included in (a) or (b) above;

6           d.       All writings, including but not limited to reports of mental, physical and  
7 blood examinations and things which the Respondent now proposes to offer in evidence;

8           e.       Any other writing or thing which is relevant and which would be  
9 admissible in evidence, including but not limited to, any patient or hospital records  
10 pertaining to the persons named in the pleading;

11          f.       Investigative reports made by or on behalf of the Respondent pertaining to  
12 the subject matter of the proceeding, to the extent that these reports (1) contain the names  
13 and addresses of witnesses or of persons having personal knowledge of the acts,  
14 omissions or events which are the basis for the proceeding, or (2) reflect matters  
15 perceived by the investigator in the course of his or her investigation, or (3) contain or  
16 include by attachment any statement or writing described in (a) to (e), inclusive, or  
17 summary thereof.

18  
19               For the purpose of this Request for Discovery, "statements" include written  
20 statements by the person, signed, or otherwise authenticated by him or her, stenographic,  
21 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,  
22 and written reports or summaries of these oral statements.

23  
24               YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for  
25 Discovery should be deemed to authorize the inspection or copying of any writing or thing which  
26 is privileged from disclosure by law or otherwise made confidential or protected as attorney's  
27 work product.

28     ///


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Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

Failure without substantial justification to comply with this Request for Discovery may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the Government Code.

DATED: 7/25/05

BILL LOCKYER, Attorney General  
of the State of California

  
\_\_\_\_\_  
JOSHUA A. ROOM  
Deputy Attorney General  
Attorneys for Complainant

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**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7**  
**PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

**SECTION 11507.5: Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

**SECTION 11507.6: Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.



## **SECTION 11507.7: Petition to compel discovery; Order; Sanctions**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

\*\*\*\*\*

**DECLARATION OF SERVICE**  
(Certified and First Class Mail)

In the Matter of the Accusation Against: *Emmanuel Zarco*  
Agency Case No. **2892**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 26, 2005, I served the attached **Accusation, Statement to Respondent, Notice of Defense (2 copies), Request for Discovery, and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **same** document(s) was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

EMMANUEL ZARCO  
1220 Severus Drive  
Vallejo, CA 94589-1484

**Certified Article Number**

7160 3901 9848 0785 7634

**SENDERS RECORD**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 26, 2005 at San Francisco, California.

FE M. DOMINGO

Typed Name

*FE M. Domingo*

Signature

7160 3901 9848 0785 7634

**TO:** EMMANUEL ZARCO  
1220 Severus Drive  
Vallejo, CA 94589-1484

**SENDER:** JAR

**REFERENCE:** Acc Pkt

PS Form 3800, June 2000

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